IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 660 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMLAL RANAMAL JAIN

Appearance:

1. Criminal Appeal No. 660 of 1990

Mr. S.S. Patel, APP for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,3,5

MR DK MODI for Respondent No. 2,4

MR MD MODI for Respondent No. 2-4

MR DM THAKKAR for Respondent No. 6

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/01/2003

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the State of Gujarat, through Food Inspector, Nadiad, has challenged judgment and order dated March 3, 1990 passed by the learned Judicial Magistrate, First Class, Dakor, in Criminal Case No.811 of 1987, by which, the respondents came to be acquitted for the offences punishable under Section 2 read with Sections 7 and 16 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: Food Inspector, Mr. M.J. Jadav, who was at the relevant time authorised to work as Food Inspector in the District of Kaira, had inspected the shop of the respondent No.1 situated at Dakor. In the said shop, the respondent No.1 was carrying the business of grocery and edible oil. The shop of the respondent No.1 was inspected by the Food Inspector, Mr. Jadav, around 10 a.m. on March 5, 1987. At that time, one peon was accompanied by the Food Inspector, Mr. Jadav. Two independent panchas were called and, in their presence, the Food Inspector had collected 375 grams of ground-nut oil from the sealed tin having the brand-name of 'Patanga' manufactured by Ram Oil Mill, Mota Devaliya, Taluka Babara,District Amreli. The said quantity of 375 grams of ground-nut oil was collected in a clean and dry vessel. The said quantity of ground-nut oil was, thereafter, filled in three glass bottles in equal proportion and the bottles were sealed and the slips containing the signatures of the panchas were affixed on the said bottles. A panchanama of collection of ground-nut oil and sealing of the sample bottles was drawn in the presence of the panchas. The Food Inspector had paid Rs.7.70 ps as price of 375 grams of ground-nut oil at the rate of Rs.21 per kg.

3. One sample was sent to the public analyst for finding out the contents of the ground-nut oil. The report of the public analyst dated March 31, 1987 indicated that the sample of ground-nut oil collected from the shop of the respondent No.1 did not conform to the standard of ground-nut oil prescribed under the Prevention of Food Adulteration Rules, 1955 ('Rules' for short). The complainant after obtaining sanction from the competent authority lodged First Information Report against the respondent No.1 from whose shop the sample of ground-nut oil was taken. The respondents Nos. 2, 3 and 4 were joined as warrantors whereas the respondent No.5 was joined as commission agent and respondent No.6 was joined as manufacturer of ground-nut oil. The complaint

lodged by the Food Inspector in the Court of the Judicial Magistrate, First Class, Dakor, was registered as Criminal Case No. 811 of 1987 for the offences punishable under Section 2 read with Sections 7 and 16 of the Act. Summons were issued against all the respondents. The complainant, Mr. M.J. Jadav, Food Inspector, was examined at Exh.22 and his evidence was concluded on September 2, 1989. The Judicial Magistrate, First Class, Dakor, after finding that there was prima facie case against the respondents, framed charge against them at Exh.50 for the offences punishable under the Act as stated hereinabove. The evidence of panch, Premchand Rana, was recorded at Exh.17. The panch did not support the case of the complainant. Further statements of the respondents were recorded by the learned Judicial Magistrate, First Class, Dakor, under Section 313 of the Code of Criminal Procedure, wherein, they have denied that they have committed any offence. The record indicated that on November 24,1987 the respondents Nos. 2, 3 and 4 have filed an application under Section 13(2) of the Act for sending the samples of ground-nut oil collected from the shop of the respondent No.1 to the Central Food Laboratory, Ghaziabad, ('CFL' for short). The said application was rejected by the learned Judicial Magistrate, First Class, Dakor, by his order dated January 5, 1988 on the ground that the application for sending samples to the CFL was filed after long delay.

4. The learned Magistrate, on appreciation of oral and documentary evidence and the arguments advanced by the learned advocates for the respective parties, has acquitted the respondents-accused from the charges framed against them on the ground that the panch had not supported the complainant and the prosecution has failed to prove beyond doubt that the sample of ground-nut oil was collected in the presence of the independent panchans by the complainant, Food Inspector, which has given rise to filing of this appeal by the State of Gujarat.

5. Learned Additional Public Prosecutor, Mr. S.S. Patel, for the appellant and learned advocate, Mr. D.K. Modi and learned advocate, Mr. D.M. Thakkar, for the respondents have taken me through the entire record and proceedings produced at the trial.

6. Heard the learned advocates for the parties.

7. Having regard to the facts and circumstances of the case, in my opinion, the prosecution case fails and the order of acquittal deserves to be confirmed on the ground that there was clear breach of Section 13(2) of

the Act in as much as the trial magistrate had grossly erred in not accepting the request of the respondents Nos. 2, 3 and 4 for sending the sample bottles of ground-nut oil to the CFL. It has been held in catena of decisions that a valuable right is lost when their application for sending sample to the CFL is rejected. [See: (1) Criminal Revision Application No.304 of 1996 decided on October 3, 1996 by the Court (Coram: S.D. Pandit, J., as he then was);
(2) Criminal Revision Applications Nos.1068 of 1991 and 1969 of 1991 decided by the Court (Coram: N.J.Pandya, J.) on September 22, 1992;
(3) 1985(2) GLR 895 in the case of Mansingh Chhajuram Yadav vs. State]

8. The submission of the learned advocate for the respondents Nos. 2, 3 and 4 that non-supply of the report of the public analyst to the respondents Nos. 2, 3 and 4 had also caused serious prejudice to them and, therefore, their conviction cannot be based on such report of the public analyst copy of which was not served on the concerned respondents, deserves merit. The Supreme Court in the case of Rameshwar Dayal vs. State of U.P., reported in 1996 Supreme Court Cases (Cri) 75 has ruled that the provisions of Section 13(2) are mandatory in nature and if there is breach and if the copy of the report of the public analyst was not served on the accused, no conviction can be based on such a report. The record indicates that the report of the public analyst was not served on the respondents Nos. 2, 3 and 4 and, in fact, it was only served on C.M.Shah. In view of the above breach of Section 13(2) of the Act, the order of acquittal recorded in favour of the respondents Nos. 2, 3 and 4 deserves to be confirmed.

9. The learned advocate for the respondents has also submitted that no evidence was led by the complainant that the sample of ground-nut oil collected from the shop of the respondent No.1 was filled in clean dry bottles. No evidence was led by the complainant that before filling the sample of ground-nut oil, the bottles were cleaned and made dry. The learned advocates for the respondents have taken me through the entire evidence of the complainant and there is not a whisper in the complaint of the complainant that he had ascertained that the bottles in which the sample of ground-nut was filled in, were cleaned and dried. The burden lies on the complainant to satisfy the Court by leading positive evidence that the bottles in which the sample was collected were cleaned and dried so as to ensure that the sample collected was not spoiled and retained its

individual character. In the absence of any evidence led by the complainant about compliance of the provisions of Rule 14 of the Rules, the prosecution case must fail. (See: 2002(2) FAC 156; State of Gujarat vs.Sohanlal Trikamchand Shah and others; 1980 21(2) GLR p.136: M.B.Risaldar vs. Radheshyam Ramdhar Agarwal and another)

10. As a result of foregoing discussion, the appeal fails and is dismissed. The judgment and order dated March 3, 1990 passed by the learned Judicial Magistrate, First Class, Dakor, in Criminal Case No.811 of 1987, is confirmed. The muddamal be destroyed as per the direction given by the trial magistrate in the judgment and order.

(M.H.Kadri, J.)

(swamy)